§ 66-431. Forfeiture of vehicles used to transport unlawfully obtained regulated metals property.

(a) Vehicles which are used or intended for use to convey or transport, or in any manner to facilitate the conveyance or transportation of unlawfully obtained regulated metals property, as defined by this Part, are subject to forfeiture, except that:

(1) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission, committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;

(2) No conveyance shall be forfeited unless the violation involved is a felony;

(3) A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of or consented to the act or omission;

(4) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section.

(b) Any vehicle subject to forfeiture under this section may be seized by any law enforcement officer upon process issued by any district or superior court having jurisdiction over the vehicle except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or a search under a search warrant;

(2) The vehicle subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under this section.

(c) Vehicles taken or detained under this section shall not be repleviable, but shall be deemed to be in custody of the law enforcement agency seizing it, which may:

(1) Place the vehicle under seal; or

(2) Remove the vehicle to a place designated by it; or

(3) Request that the North Carolina Department of Justice take custody of the vehicle and remove it to an appropriate location for disposition in accordance with law.

Any vehicle seized by a State, local, or county law enforcement officer shall be held in safekeeping as provided in this subsection until an order of disposition is properly entered by the judge.

(d) Whenever a vehicle is forfeited under this section, the law enforcement agency having custody of it may:

(1) Retain the vehicle for official use; or

(2) Sell any forfeited vehicle, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale, including expense of seizure, maintenance of custody, advertising, and court costs; or

(3) Transfer any vehicles which are forfeited under the provisions of this section to the North Carolina Department of Justice when, in the discretion of the presiding judge and upon application of the North Carolina Department of Justice, said vehicle may be of official use to the North Carolina Department of Justice;

(4) Upon determination by the director of any law enforcement agency that a vehicle transferred pursuant to the provisions of this section is of no further use to said agency for use in official investigations, such vehicle may be sold as surplus property in the same manner as other vehicles owned by the law

enforcement agency, and the proceeds from such sale after deducting the cost of sale shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in the county in which said vehicle was seized; provided, that any vehicle transferred to any law enforcement agency under the provisions of this section which has been modified to increase speed shall be used in the performance of official duties only and not for resale, transfer, or disposition other than as junk. (2007-301, s. 3; 2012-46, ss. 27, 29.)